

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09 / 287,478 Confirmation No. 6350
Applicant : Christian S. Rode
Filed : April 6, 1999
Provisional Appl. Filed : 60 / 080,905, 4/06/98
TC./A.U. : 2128
Examiner : Thai Phan

Docket No. : RCI001v1

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

**MISCELLANEOUS COMMUNICATION
REGARDING APPEAL FILING ISSUES**

Dear Mr Phan:

Here is a simplified summary of the issues regarding a pending appeal for application 09/287,478. Please see also my earlier submission of 4/5/2007 regarding some of these same issues.

The Appeal Brief was filed very early on 12/20/2006 with a paid 5-month extension. Unfortunately it was filed without the requisite Appeal Brief fee due to confusion on my part with regards to the identical sum being paid for filing the Notice of Appeal. The Brief was unsigned, also. I received a Notification of Non-Compliant Appeal Brief with a mailing date of 2/13/2007 due to these above issues.

In between 12/20/2006 and 2/13/2007 I filed an amendment to the original brief incorporating material originally and incorrectly submitted as an IDS in response to matters of fact (S1.132) with regards to the citation of Lawson as prior art. I hope that this will be incorporated as evidence for the existing appeal. This amendment was sent by Express Mail on 1/19/2007, the last day of the fifth month of the paid-for extension.

Consequently in my response to the Notification, Express Mailed on 3/15/2007 (last day of 30 days of notice) I **merged** the original appeal with the amendment to simplify things. It was signed and the Appeal Brief Fee included.

Now, however, an issue has arisen as to whether even documents that are Express Mailed must include a signed Certificate of Mailing. In the case of both the 1/19/2007 and 3/15/2007 mailings I can provide copies of the Express Mail receipts and signed letters attesting to the fact that these documents were mailed on the dates in question but is this either necessary or sufficient? Is a petition possible? I have heard conflicting opinions between individuals at the IAC and EBC on this matter. Is it possible to have the application reviewed now for issues of this nature by the SPRE for TC2100?

If the Express Mail dates are not accepted, then I may have to re-amend my response of 3/15/2007 and pay an additional fee. My motive in contacting you last week was to try and resolve this before the next bump-up in late fee of 4/15/2007. I understand you cannot review in depth any of the papers in question, but hope you might have a few minutes to consider the issues of filing dates and Express Mail equivalence and indicate whether I would have to re-amend my Response. Also of interest is the issue of potential Appeal abandonment due to the late filing of the fee (although there was >30 days remaining on the extension when originally filed)

I hope we might speak again briefly, perhaps early Friday afternoon, or at such other time as you might suggest, but before the 15th, if possible.

Thank you,
Chris Rode
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